In Re: Case No. 04-51061

Linda Lou Mayo

Chapter 7 Case

Debtor(s)

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

- TO: Debtor(s) and other entities specified in Local Rule 9013-3.
- Ford Motor Credit Company moves the Court for the relief requested below and gives notice of hearing.
- 2. The Court will hold a hearing on this motion on November 3, 2004 at 1:30 PM o'clock, in Courtroom No. 2, at the United States Courthouse, 515 West First St, Duluth, MN.
- 3. Any response to this motion must be filed and delivered not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed September 20, 2004. The case is now pending in this court.
- 5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1.

 Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2000 MERCURY COUGAR V6 COUPE 2D VEHICLE (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule

4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the

terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor

has no equity in the collateral, and the collateral is not necessary to an effective reorganization.

7. Movant gives notice that it may, if necessary, call Chester Marzec, or some other representative

of Movant, from Movant's offices in Minnesota, to testify regarding the debt and collateral value.

8. This notice of motion and motion also serve as notice of default required by <u>Cobb v. Midwest</u>

Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the

hearing, Movant will repossess the collateral promptly upon the Court signing the Order.

9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, Ford Motor Credit Company moves the Court for an order modifying the automatic stay of §362(a) of the Bankruptcy Code to permit Movant to take possession and dispose of the collateral, and such other relief as may be just and equitable.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X Attorneys for Movant 430 Oak Grove Street #200 Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MAYO LINDA L PO BOX 450 DEER RIVER MN 56636

	DECK	KIVEK III		County of Debtor Residence	SAUK
Year	Make	Body Style	Vehicle Identification Number	Secured Party No.	Date of Issue
2000	MERC	2DR	1ZWFT61L4Y5610391	002823	04/26/03

SECURED PARTY NAME AND ADDRESS

FORD MOTOR CREDIT COMPANY
PO BOX 105704
ATLANTA GA 30348-5704

Lending Agency: Retain this document until the lien has been satisfied. See reverse side of this form for removing this lien. Valid lien release only if signed on reverse side.

EXHIBIT A

WISCONS	IN SIMPLE INTERES	VEHICLE RE	TAIL INSTALMEN	T CONTRACT A	303 3MQ() !	DATE 4/11/2003		
Buyer (and C LINDA L	ss (Including Count)	REDITOR (Seller Nam LACIER VALLE	ie and Addices!	RCUR	r, INC.				
PO BOX	45 8		15 SOUTH BOU		A	R 24			
DEER RI	VER, () MIN. 566	53913							
You, the Buy	yer (and Co-Buyer, if any elow, for cash or on cred	, may buy the pro	perty described belo is shown below as " the agreements on the	w, or if the following Cash Price." The cre he front and back of t	section is comedit price is show this contract.	pleted, wn belo	the Repairs or Accessories ow as "Total Sale Price." By		
Complete	only if contract cove	ers repairs or a	ccessories and n	ot the sale of the	Property:	\Box	Use For Which Purchased		
	Order Number N/A	N/A	scription	N/A	zu enca				
							☐ Personal ☐ Agricultural ☐ Commercial ☐		
TRADE-IN	:Year and f	Vske		I/A s Allowance Property Identifica	\$	A	mount Owing		
New/Used		Modei	GVW if Truck (lbs.)	Property Identifica 12WFT61L4Y56	tion Number		se For Which Purchased Personal		
USED	MERCURY	COUGAR		,			Commercial		
	ITEMIZATI	ON OF AMOUN	T FINANCED			-	URANCE		
1. Cash i	Price		\$	13,995.00 (1)			OBTAIN PROPERTY M A PERSON OF YOUR		
2. Down	Payment Party Rebate Assigned		s 1	1/A	CHOICE.				
Cash (Down Payment		\$ 500.	00 / A			ANCE COVERAGE FOR Y AND PROPERTY		
Trade-	ed Down Payment In (description above)		s 1	17 h	DAMAGE CAUSED TO OTHERS IS NOT				
Total I	Down Payment d Balance of Cash Pric	e (1 minus 2)	S	500.00(2) 13,495.00(3)	INCLUDED.				
4. Amou	nts paid on your behalf c Officials	(Seller may be r	etaining a portion o	f these amounts)	OTHER OPT	IANOF	REDIT DISABILITY AND LINSURANCE ARE NOT		
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(m)	for filing fees \$for taxes (not in Cash Pi surance Companies for	ice) \$	\$	861.22	You have t	he rig	ht to cancel Credit Life		
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	it Disability Insurance	G X P		N/A 460.00	□ Credit L		he full premium shown. A		
To JA		for N/A		N/A	1	ile 立	Insurer		
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!	nt Financed (3 plus 4)		s	1,321.22 (4)		Si	gnature(s)		
5. Amou					Credit	W/3			
L			G DISCLOSURES	Total Sale	□ Disabili		1130101		
PERCENTAGE CHARGE Financed Payments Price					\$ N/A N/A Premium Insured				
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credit as a	yearly rate cost you	your behal	f have made all	Including your downpayment	□ N/A	-	N/A		
payments 10.990 % \$ 4,507.98 \$ 14,816.22 \$19,324.20				of \$ 500.00	Other O	ptiona	Insurance Term		
1	0.990 % \$ 4,507.			\$ 19,824.20		Insure	r \$ N/A Premium		
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By signi	ng below, the Seller acc assignment attached to	epts this contract this contract the	. If no other Assign Seller assigns it to	ee is named in a Ford Motor Credit] [•	Ford		
Company	у.	1.	71. S//	/ 200	PLEASE	CALL	US AT 1-800-727-7000		
Seller	GLACIER VALLEY POP	ID-MERCUTAY, PET	BUUNN	W/Cl	Visit u	s at w	or www.fordcredit.com		
	Jan 03 Previous editions may NO)T be used. Si	EE BACK FOR ADDIT	IONAL AGREEMENT	_		03-001		

EXHIBIT B

ORIGINAL

Trade-in Type	Trade-in	BODY	Model			T	BODY	Mode		
2001 SABLE-V6		TYPE	No.	Loan			TYPE	No.	Loan	Retail
1995 1995 1996			Jise	15	0 150	400	AUU Power Si	inmof	400	AFF
7725 Sedan 4D LS Premium	2001 SABI	LE-V6		1	MC: II	125	Add Pwr Seat	(Std. LS)	125	150
7725 Sectar 4D LS Premium .55 6975 8975 (1975 Wagon 4D LS Premium .55 6975 8975 (1975 Wagon 4D LS Premium .57 9750 19750 8625 Sectan 4D LS .77 1970 9875 8775 Wagon 4D LS Premium .57 9790 10700 325 Add 3.0.2 AV (53) .325 375 375 Add CD Player .77 1070 350 Add Leather Seats .350 400 350 Add Leather Seats .125 550 4025 3675 3675 3675 3675 3675 3675 3675 367	6775 Sec	an 4D GS	50		7600	1/5	Ded W/o Third	i Seat (Wagon)	175	175
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19375 Sectar 40 LS	2001 GRAN	D MAROUIS	-VR	M	IC. 101	75	Add Cruise Cor	etrol	75	
1325 Sectar 4D Limited	9550 Seda	an 40 GS	74	8600	11700	75	lad Leather Se	ats	125	
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					10H - 3	r. IEMBE	n 2004			D

								MINI	53
Trade-In	BODY TYPE	Model No.	Loan	Retail	Trade-in	BODY TYPE	Model No.	Loan	Retail
2175	Sedan 4D LS	13	1975	3300		Add Power Seat		50	75
2350 50	Wagon 4D LS Add Cruise Contro	15	2125		225	Add Power Sunn	oof	225	250
100	Add Leather Seats		50 100	75 125		Deduct Wout C	ruise	50	50
50	Add Power Window	ws	50	75	1.221	ABLE-V6 Sedan 4D GS			C: 11
300 225	Deduct Wout Air	Cond	300	300	2700	Sedan 4D LS	52	2100 2450	3575 4000
	Deduct W/out AT IYSTIQUE-4 Cyl		225	225	2675	Wagon 4D GS	55	2425	3950
2375	Sedan 4D GS	. 65	2150	IC: II 3525	3030	Wagon 4D LS Add Leather Sea	58	2750	4400
3100	Sedan 4D LS (V6)	66	2800	4325		Add Power Sunn	ns	150 225	175 250
50	Add A/A Wheels (S	Std. LS)	50	75	50	Add Pwr Seat (S	td. LS)	50	75
75	Add Power Sunroc Add Pwr Seat (Std	π ∃S\	300 75	350 100		Deduct Wout C		25	25
325	Deduct W/out AT		325	325	1331 0	RAND MARQUI Sedan 4D GS	IS-V8		C: III
	ABLE-V6		M	C: II		Sedan 4D LS	75	3825 4250	5875 6400
2925	Sedan 4D GS	50		4250	50	Add Alum/Alloy V	Vheels	50	75
3875	Sedan 4D LS Wagon 4D LS	53 55	3075 3500	4800 5325	200	Add Leather Sea	ts	200	225
	Add A/A Wheels (S		50	75					
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75.	Add Pwr Seat (Std.	LS)	300 75	350 100	MINI				
75	Ded W/o Third Sea	t (Wagon)	75	75	2004 CO	OPER-4 Cyl	5 Spd.	M	C: II
1998 GI	RAND MARQUIS	-V8		C: III		Coupe 2D	RC334		
6400	Sedan 4D GS Sedan 4D LS	74	5300 5775			Coupe 2D S (6 Sp Add AT	(I.) . RE334		
	Add Alum/Alloy Wh		100	8300 125		Add Harman Karo	don Stereo .		
	Add Leather Seats		250	300		Add Leather Seat			
MERCU						Add Navigation S Add Power Sunro	ystem of		
1997 TR	ACER-4 Cyl.			C: I		Add Theft Recove	ery System		
1750	Sedan 4D GS Sedan 4D LS	10	1500 1575	2700 2825		Deduct Wout Cr	uise		
1900	Nagon 4D LS	15	1725	2000	MINI	ODED 4 O	- . .		
200 !	Deduct W/out Air C	Cond	200	200	17525	OPER-4 Cyl! Coupe 2D	5 Spd.	MC);
	Deduct W/out AT .		150	150	20600	Coupe 2D S (6 Sp	d.) . RE334 1	8550 2	3225
199/ MI 1900 °	YSTIQUE-4 Cyl. Sedan 4D	ee.		C: II	575	Add AT,		575	650
1950 9	Sedan 4D GS	65	1725 1775	3000 3050	450	Add Harman Kard Add Leather Seat	on Stereo .	275 450	325
2125	Sedan 40 LS	66	1925	3250	525 <i>l</i>	Add Navigation St	vstem	400 525	500 600
23/5 8	Sedan 4D GS (V6). Sedan 4D LS (V6)	65	1975 2125	3300	550 /	Add Power Sunro	of	550	625
150 /	Add Leather Seats	00	150	3500 175	200 1	Add Theft Recove Deduct Wout Cr.	ry System	75	100
225 A	ldd Power Sunroof		225	050	MINI	POWER VEROUS CIT	115e	200	200
300 1	\dd Pwr Seat (Std. Jeduct W/out Air C	LS)	50 300	75		OPER-4 Cyl	Sod.	MC	: H
200 E	Jeduct W/out AT .		200	300	15025 (Coupe 2D	RC334 1	3525 1	7350
25 [leduct W/out Cruis	æ	25	25	17950 (Coupe 2D S (6 Sp	d.) . RE334 1	6175 2	
	Deduct W/out Pwr	Wind	25	25	225	\dd AT \dd Harman Kard	on Stereo	525 225	600 250
	UGAR-V6 Coupe 2D XR7	en .		: 11	400 /	\dd Leather Seats	3	400	450
3275	Coupe 2D XR7 (V8)	62		4200 4650	450 /	dd Navigation Sy	stem	450	500
150 A	ldd Leather Seats		150	175	75 A	Add Power Sunro	or rv Svstem	500 75	575 100
	ADJ	UST FOR	MILEA		DJUST	FOR CONDITI	ON	,,	100
)		MIDW	EST ED	ITION -	SEPTEM	IBER 2004	-		

PASSENGER CARS

EXHIBIT C

04-03966-0

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In Re:		Case No. 04-51061 Chapter 7 Case
Linda Lou Mayo	Debtor(s)	

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Chester Marzec, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

- I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 34389440.
- The Debtor owes the Creditor \$12,136.01, payoff amount as of September 20, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$322.07. As of September 20, 2004, the loan payments are in arrears \$644.14 for payments owing since August 11, 2004.
- The debt owed to the Creditor is secured by a perfected lien on a 2000 MERCURY COUGAR
 V6 COUPE 2D VEHICLE. The current value of the collateral is believed to be \$8,675.00.
- 4. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".
- 5. The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so.
- 6. The Contract requires insurance be maintained by buyer to protect Creditor's interest in the collateral. No evidence of insurance has been provided since filing.

Dated: 9-29-04

Chester Marzec

Ford Motor Credit Company National Bankruptcy Svc Center

PO Box 537950

Livonia, MT 48153-7950

In Re: Case No. 04-51061

Linda Lou Mayo Chapter 7 Case

Debtor(s)

MEMORANDUM OF FACT AND LAW

Ford Motor Credit Company ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in the possession of the Debtor.

The total net balance due on the Contract is \$12,136.01 as of September 20, 2004. On information and belief, the collateral has a current NADA retail value of \$8,675.00. A copy of the NADA page(s) showing the value of the collateral is attached as Exhibit "C".

The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so.

Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments. There has been a further material default; Debtor has failed to comply with the Contract provision requiring Debtor to supply Movant with evidence of collateral insurance.

ARGUMENT

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since August 11, 2004.
- Failure to make payments due post petition under the Contract.

Failure to reaffirm, redeem or surrender the collateral.

Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood

Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County

Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor

to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor

has no equity in the property and the property is not necessary to an effective reorganization. See, In re

Gellert, 55 B.R. 970 (Bkrtcy. D.N.H. 1983). In the present case, the balance due Movant on the Contract

is \$12,136.01. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the

issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97

(N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to

11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion,

order is not applicable so that Movant may immediately enforce and implement the order granting relief.

Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

In Re: Case No. 04-51061

Linda Lou Mayo Chapter 7 Case

Debtor(s)

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on <u>October 4, 2004</u>, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Linda Lou Mayo PO Box 450 Deer River, MN 56636

John F Hedtke 1217 E 1st Street Duluth, MN 55805

Robert R Kanuit Chapter 7 Trustee 4815 W Arrowhead Rd, Suite 230 Hermantown, MN 55811

U.S. Trustee 1015 U.S. Courthouse 300 South 4th Street Minneapolis, MN 55415

Executed on: October 4, 2004

Signed: /e/Linda Jeanne Jungers Linda Jeanne Jungers STEWART, ZLIMEN & JUNGERS 430 Oak Grove Street, #200 Minneapolis, MN 55403

In Re:	Case No. 04-5106							
Linda I	Chapter 7 Case Debtor(s)							
	ORDER FOR RELIEF FROM THE STAY							
	lotor Credit Company's Motion for an order granting relief from the stay came before the Court or ber 3, 2004 at 1:30 PM o'clock.							
in the p	on the arguments of counsel, all the files, records and proceedings herein, the court being advised premises, and the court's findings of fact and conclusions of law, if any, having been stated orally d in open court following the close of evidence,							
	IT IS HEREBY ORDERED:							
1.	The automatic stay is modified to permit Ford Motor Credit Company to repossess and sell the							
	2000 MERCURY COUGAR V6 COUPE 2D VEHICLE, VIN 1ZWFT61L4Y5610391, in							
	accordance with applicable state law.							
2.	Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective							
	immediately.							
Dated:								
	United States Bankruptcy Judge							